

## DISTRICT OF DELAWARE UPDATE

July, 2019

Last August, two new judges joined the United States District Court for the District of Delaware, Judge Colm F. Connolly and Judge Maryellen Noreika. Judge Connolly filled the seat previously held by Judge Sue L. Robinson and Judge Noreika filled the seat previously held by Judge Gregory M. Sleet. In recent months, both Judge Connolly and Judge Noreika have each adopted new procedures for dealing with case dispositive motions.

Judge Connolly has adopted two form scheduling orders for patent cases, one for cases in which infringement is alleged and one for cases in which only invalidity and not infringement is alleged. Both form scheduling orders permit case dispositive motions after discovery has closed and follow the practice in the District of Delaware which prohibits early case dispositive motions absent leave of the Court. Judge Connolly requires that any motion for summary judgment be accompanied by a separate concise statement detailing each material fact as to which the moving party contends that there are no genuine issues to be tried that are essential for the Court's determination of the summary judgment motion (not the entire case). Any party who opposes the motion is required to file with its opposing papers a separate document containing a single concise statement that admits or disputes the facts set forth in the moving party's concise statement, as well as sets forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

The Local Rules for the District of Delaware generally impose page limits on briefing and requires that briefs and motions be in at least 12-point font. However, Judge Connolly has implemented separate word count limits for purposes of case dispositive briefing which set limits for a combined total for opening (10,000 words regardless of the number of case dispositive motions filed), answering (10,000 words) and reply (5,000 words) briefs. Those limits are increased slightly if a Daubert motion is filed in addition to a case dispositive motion or motions. For Judge Connolly's matters, case dispositive briefs and concise statements of fact must be in 14-point font.

Judge Noreika has adopted two form scheduling orders for patent cases, one for ANDA cases, and one for Non-ANDA cases. Judge Noreika does not allow case dispositive motions in ANDA cases. For non-ANDA cases, Judge Noreika permits such motions after the close of discovery. Any motion for summary judgment must be accompanied by a separate concise statement, not to exceed 6 pages, which details each material fact which the moving party contends is essential for the Court's resolution of the summary judgment motion (not the entire case) and as to which the moving party contends there is no genuine issue to be tried. Any party opposing the motion shall include with its opposing papers a response to the moving party's concise statement, not to exceed 6 pages, which



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admits or disputes the facts set forth in the moving party's concise statement on a paragraph-by-paragraph basis. To the extent a fact is disputed, the basis of the dispute shall be supported by specific citation(s) to the record. Failure to respond to a fact presented in the moving party's concise statement of facts shall indicate that fact is not in dispute for purposes of summary judgment. The party opposing the motion may also, but is not required to, include with its opposing papers a separate concise statement, not to exceed 4 pages, which sets forth material facts as to which the opposing party contends there is a genuine issue to be tried. The moving party shall include with its reply papers a response to the opposing party's concise statement of facts, not to exceed 4 pages, on a paragraph-by-paragraph basis.

Judge Noreika imposes combined total page limits for all opening (40 pages), answering (40 pages) and reply (20 pages) briefs, which are increased slightly if a Daubert motion is filed along with the dispositive motion or motions. Judge Noreika requires that the parties work together to ensure that the Court receives no more than a total of 250 pages (i.e., 50 + 50 + 25 regarding one side's motions, and 50 + 50 + 25 regarding the other side's motions) of briefing on all case dispositive motions and Daubert motions that are covered in a particular scheduling order and any other scheduling order entered in any related case that is proceeding on a consolidated or coordinated pretrial schedule. The objective of this limitation appears to be to prevent multiple briefs from multiple parties in consolidated or coordinated cases.

Please do not hesitate to contact any member of the [Connolly Gallagher IP Litigation Group](#) if we can be of assistance.

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